APPENDIX B

INTERSTATE COMMERCE COMMISSION

No. 25566

INTRASTATE RATES ON BITUMINOUS COAL WITHIN OHIO

Decided March 5, 1956

Ohio intrastate rates on bituminous coal, in carloads, to Cleveland, Lorain, Avon Lake, and Willoughby, Ohio, and intermediate points, found not in contravention of the requirements of the prior order entered herein on May 2, 1933, but shown to cause unjust discrimination against interstate commerce and undue preference of and advantage to persons and localities in intrastate commerce, and undue prejudice and disadvantage to persons and localities in interstate commerce. Unlawfulness ordered removed. Prior report, 192 I. C. C. 413.

Edward A. Kaier, *L. James Huegel*, *Leo P. Day*, *Eugene E. Anderson, Jr.*, *Robert B. Claytor*, *John W. Hanifin*, *Thomas O. Broker*, *K. A. Dobbins*, and *A. C. Armstrong* for respondents.

C. F. Taplin, Jr., *George D. Kinder*, *Bruce W. Eaken*, *Crede C. Calhoun*, *Nuel D. Belnap*, *Donald H. Hauser*, and *Lee C. Howley* for protestants.

Ralph S. Locher and *Andrew R. Sarisky* for the city of Cleveland, Ohio.

William M. Maddox, *Homer S. Carpenter*, *Jerome H. Simonds*, *Samuel P. Delisi*, *Henry M. Wick, Jr.*, *John F. Donelon*, *August G. Gutheim*, *John D. Amos*, *Wesley A. Rogers*, *R. M. Davis*, and *J. P. MacFarlane* for various coal companies or associations.

Report of the Commission on Further Hearing

By the Commission:

Exceptions, and replies thereto, to the proposed report of the examiner were filed by the parties, and we have heard them in oral argument. Our conclusions differ in part from those recommended by the examiner. Exceptions and requested findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

In the original report herein, 192 I. C. C. 413,[1] decided May 2, 1933, we found that the intrastate rates there in issue on coal from eastern Ohio districts to destinations in northeastern Ohio, were, and for the future would be, unduly preferential of Ohio shippers and localities,

[1] The original report also embraced numerous complaint and suspension proceedings, as enumerated in footnote 1 at page 413, not here reopened.

and unduly prejudicial to interstate localities and shippers of bituminous coal from defined rate districts in Pennsylvania and West Virginia, and that those rates resulted and would result in undue, unreasonable, and unjust discrimination against interstate commerce, in violation of section 13 of the Interstate Commerce Act. The carriers were ordered to remove the undue preference and prejudice and the unjust discrimination by establishing and maintaining intrastate rates[2] which were no lower than those in effect immediately prior to August 1, 1932, the date on which they had been reduced.[3] The order of the Commission was upheld in *State of Ohio* v. *United States*, 292 U. S. 498, and the prior rates were reestablished on February 16, 1934.

For many years prior to August 1, 1932, the rates from mining districts in Ohio to destinations in northeastern Ohio were related by fixed differentials with the rates from mining districts in Pennsylvania and West Virginia. For example, to Cleveland the rate from mines in the Ohio No. 8 district was 10 cents under the rate from the Pittsburgh district in Pennsylvania; the rate from the Connellsville district in southwestern Pennsylvania was 6 cents higher than that from the Pittsburgh district; and the rate from the Fairmount district in northern West Virginia was 9 cents higher than the rate from the Connellsville district. These differentials, which had been disrupted by the reductions in the Ohio intrastate rates on August 1, 1932, were restored when the Ohio rates were increased on February 16, 1934.

Following the adjustment of February 16, 1934, numerous general increases were made in the rates on coal from both intrastate and interstate origins. To Cleveland, for example, the rates on August 21, 1948, were $2.49 from Ohio No. 8, $2.59 from Pittsburgh, $2.65 from Connellsville, and $2.74 from Fairmont. It will be noted that, although the rates had been increased substantially, the differentials remained the same. On September 1, 1949, pursuant to the decision in Ex Parte No. 168,[4] the rates to Cleveland became $2.74 from Ohio No. 8, $2.85 from Pittsburgh, $2.92 from Connellsville, and $3.01 from Fairmont, thus making the Ohio No. 8 differentials 11 cents under Pittsburgh, 18 cents under Connellsville, and 27 cents under Fairmont. Following the decisions in Ex Parte No. 175,[5] the respective rates to Cleveland, ignoring fractions of a cent, became $3.07, $3.19, $3.27, and $3.37 on May 2, 1952.

The rate of $3.07 from the Ohio No. 8 district was applicable over interstate routes only. In the original report in Ex Parte No. 175,

[2] Rates and differences in rates are stated per net ton.

[3] The intrastate rate from the Ohio No. 8 district to Cleveland, Ohio, for example, had been reduced by 20 cents, or from $1.74 to $1.45.

[4] *Increased Freight Rates, 1948*, 276 I. C. C. 9.

[5] *Increased Freight Rates, 1951*, 280 I. C. C. 179; 281 I. C. C. 557; 284 I. C. C. 589.

280 I. C. C. 179, an increase of 2 percent, maximum 6 cents per net ton, was authorized in the rates on coal. The Public Utilities Commission of Ohio authorized a similar increase on March 22, 1951. In the report on further hearing therein, 281 I. C. C. 557, decided August 2, 1951, an increase of 6 percent, maximum 20 cents per ton, was authorized in lieu of the prior increase. The Ohio commission refused to permit a similar increase on intrastate coal traffic, and on February 15, 1952, it ordered the removal of the original increase of 2 percent. Later, after protracted hearings, the Ohio commission, on May 7, 1953, approved increases of 12 percent, maximum 40 cents per net ton, as authorized on interstate traffic in the report on second further hearing in Ex Parte No. 175, 284 I. C. C. 589, decided April 11, 1952, and on May 13, 1953, the increases in the intrastate rates became the same as the increases in the interstate rates to these northeastern Ohio destinations. The action of the Ohio commission was upheld by the Ohio Supreme Court on March 17, 1954. *Toledo Edison Co. v. Public Utilities Comm.*, 118 N. E. (2d) 531.

The Cleveland Electric Illuminating Company, called hereinafter the Illuminating Company, is engaged in the production, sale, and distribution of electricity for light, heat, and power purposes in Cleveland and adjacent territory. It also produces steam for heating purposes in the downtown business section of Cleveland. It operates four electric generating plants on the south shore of Lake Erie located at Avon Lake, Lake Shore (Cleveland), Willoughby (Eastlake), and Ceico, Ohio. Avon Lake, 8.3 miles east of Lorain, Ohio, and 18.4 miles west of Cleveland is served by The New York, Chicago and St. Louis Railroad Company, hereinafter called the Nickel Plate. Lake Shore is in the northern part of Cleveland, Willoughby (Eastlake) is 18.2 miles east of Cleveland, and Ceico is on a spur track 2.4 miles from Ashtabula. The latter three plants are served by The New York Central Railroad Company. The two steam generating plants are in Cleveland. One is served by The Baltimore and Ohio Railroad Company and the other by The Pennsylvania Railroad Company. All of the electric generating plants are large consumers of coal, requiring from 54 to 114 carloads a day for capacity operations.

Prior to 1950 the Illuminating Company received all of its coal requirements by rail. In that year it commenced using trucks to transport coal from Raymilton, Pa., near the northern border of the Butler-Mercer (Pennsylvania) district to its plant at Ceico, a distance of about 82 miles. The truck shipments aggregated 29,951 tons in 1950, 77,769 tons in 1951, 113,912 tons in 1952, and 144,924 tons in 1953. It also received 118,049 tons of coal by truck at its East-

lake (Willoughby) plant in 1953, some of which originated in the Leetonia and Middle districts of Ohio.

For some time the Illuminating Company had discussed with railroad officials the question of reductions in rail rates on coal to meet truck competition. The discussions were on a broad general basis, taking into consideration also the prospect of purchasing power from electric plants located nearer the coalfields, and the question of locating new powerplants, when needed, nearer the source of coal. Shortly after a meeting in December 1953, a reduction of 31 cents was proposed in the rail rate from Raymilton to Ceico, and that reduction was made on April 23, 1954. About a month and a half later the rail rate from Raymilton to Willoughby (Eastlake) was reduced a like amount. As a result of these reductions, the rate to both destinations became $2.36.

In the meantime, discussions had continued with respect to reduced rail rates to Avon Lake and Eastlake from Ohio mines in order to forestall the diversion of this traffic to trucks. The matter was considered by the responsible traffic officials of the principal rail carriers, and on April 12, 1954, the respondents decided to reduce their rates on fine coal [*] by 44 cents to Cleveland, Lorain, Avon Lake, and Willoughby (Eastlake), and to directly intermediate points that might be affected thereby, from origins in the Ohio No. 8, Middle, and Leetonia districts. Later, a similar reduction was authorized from Zelienople, Pa., and from the Cambridge and Crooksville districts in Ohio, the Moundsville and Fairmont districts in West Virginia, and the Pittsburgh, Connellsville, and Freeport districts in Pennsylvania.

In order to avoid departures from the long-and-short-haul provision of section 4 of the act, it was necessary to reduce the rates from the Butler-Mercer district to the Freeport basis, and from the Massillon (Ohio) district to the Middle-district basis. This resulted in a proposed reduction of 25 cents in the rates from the Butler-Mercer district and of 44 cents from Massillon.

The reductions of 25 cents from Butler-Mercer and 44 cents from the other districts were published to become effective on August 2, 1954. After they were filed, the rail lines received numerous requests for reductions from other origins and to other destinations. These requests were based in part on these proposed reductions and in part on a reduction of 35 cents a ton which the carriers had recently made in their lake-cargo rates on fine coal. See *Reduced Rates on Coal from the East to the Northwest*, 292 I. C. C. 119. The rail officials concluded

[*] Bituminous fine coal which will pass through a bar screen not exceeding 1.5 inches between bars or its equivalent, a 2-inch mesh, or a 2-inch round perforation.

that the matter should be given further consideration, and that the effective date of the proposed reductions should be postponed from August 2 to September 2, 1954. Special permission to make this postponement was obtained from us and the Ohio commission on July 29, 1954. However, on July 30 the Ohio commission rescinded its special-permission authority, and the reduced rates on Ohio intrastate traffic became effective on August 2. The proposed reductions on interstate traffic have been further postponed from time to time [7] over the protests of various interstate shippers. After the Ohio intrastate reductions became effective, the Nickel Plate,[8] which originates more coal in Ohio than any other rail carrier, refused to increase its rates voluntarily, and the other carriers were compelled to continue their reductions or otherwise lose substantial tonnage to the Cleveland area.

By petition dated September 7, 1954, certain railroads,[9] herein sometimes called the petitioners, alleged that the Ohio intrastate reductions result in a violation of the order entered herein on May 2, 1933, and requested us to enforce said order. On September 21, 1954, the proceeding was reopened for further hearing to determine whether the intrastate rates on bituminous coal from origins in Ohio to Cleveland, Lorain, Avon Lake, and Willoughby, and intermediate points, affect interstate rates on coal traffic in such a manner as to contravene (*a*) the requirements of the order of May 2, 1933, and (*b*) the provisions of section 13 (3) and (4) of the act. Evidence in support of increasing the intrastate rates to the level which existed on August 1, 1954, was adduced by the petitioners. The Illuminating Company, the city of Cleveland, the Ohio Coal Association, and the North American Coal Corporation are opposed to any increase. The Nickel Plate, although a nominal respondent, also opposes an increase. The interstate shippers seek the restoration of the differentials which previously existed, but generally they desire that this be done by reductions in the interstate rates.

The issue as to the order of May 2, 1933.—At the further hearing herein, the use of the prior record was limited to a determination of the issue described in (*a*) above; that is, whether the present intrastate rates contravene the requirements of the order of May 2, 1933, and this issue will be discussed first. That order, as indicated, required the carriers to establish and maintain intrastate rates no lower than

[7] They are now scheduled to become effective on June 1, 1956.

[8] Including The Lorain & West Virginia Railway Company.

[9] The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, the Erie Railroad Company, The Monongahela Railway Company, the Montour Railroad Company, The New York Central Railroad Company, the Norfolk and Western Railway Company, The Pennsylvania Railroad Company, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh & West Virginia Railway Company, The Virginian Railway Company, the Western Allegheny Railroad Company, and the Western Maryland Railway Company.

those in effect immediately prior to August 1, 1932. For example, on July 31, 1932, the rates from the Ohio No. 8 district were $1.51 to Akron, Ohio, and $1.74 to Cleveland. On the following day these respective rates were reduced to $1.28 and $1.45. In compliance with the order of May 2, the prior rates of $1.51 and $1.74 were reestablished on February 16, 1934, and the present rates are $2.45 and $2.63, respectively. The present rates obviously are no lower than the rates in effect on July 31, 1932, but it is argued that the order also required the establishment and maintenance of the differentials, interstate versus intrastate, that were in effect on that date.

Although the rates which became effective on February 16, 1934, resulted in restoring the differentials that existed on July 31, 1932, there is nothing in the order of May 2, 1933, specifically requiring that such differentials be maintained. In fact, the petitioners as well as the Nickel Plate have not applied the increases authorized in Ex Parte No. 175 to the intrastate rates from the Ohio No. 8 district to Akron, but have applied them to the rates from the interstate origins. With respect to this situation, the petitioners point out that the Nickel Plate included an exception in the Ex Parte No. 175 petition providing that the increases which might be authorized therein would not be applied to the intrastate rates to Akron and certain other destinations, and they urge that the order of May 2, 1933, should be read in the light of that exception. It seems apparent that if the petitioners could lawfully evade the order of May 2 and disrupt the so-called prescribed differentials between the intrastate and interstate rates to Akron by declining to apply the Ex Parte No. 175 increases to the intrastate rates, they could also lawfully remove the increases after they were established to either Akron, Cleveland, or any other Ohio destination.

In support of their contention that when the various general increases were applied to the interstate rates to Cleveland and other destinations in northeastern Ohio, the order of May 2, 1933, required corresponding increases in the intrastate rates so as to preserve the rate relationships, the petitioners refer to the decision of the Court of Appeals of New York in *Transit Comm.* v. *Long Island R. Co.*, 51 N. E. (2d) 668. That case is not in point. It involved an increase of 10 percent in the intrastate fares authorized by us in January 1942 See *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 565. The increased fares, however, were less than we had previously prescribed in *Rates, Fares, and Charges of New York Central R. Co.*, 59 I. C. C. 290. See also *Increased Passenger Fares, Eastern Railroads*, 268 I. C. C. 457, 465.

It may be noted that after the Ohio commission denied an increase of 6 percent and ordered the removal of the previously authorized increase of 2 percent in the Ohio intrastate rates on coal, the peti-

tioners, in May 1952, filed an application with us requesting relief under section 13 of the act so as to require an increase in the Ohio intrastate rates to the same extent as authorized for interstate traffic in Ex Parte No. 175. No action has been taken thereon as the Ohio commission later authorized such increases, but the filing of the application indicates that the petitioners did not then consider that relief could be had under the prior order of May 2, 1933. Moreover, when seeking fourth-section relief in connection with the proposed interstate rates, they took note of the fact that the prior order remained in effect, but observed that the proposed rates were well above those prescribed in that order.

We conclude that the present intrastate rates on coal within Ohio do not contravene the requirements of the order of May 2, 1933.

The section 13 issue.—In 1953, Cleveland, Lorain, Avon Lake, and Willoughby received 12,114,211 net tons of track-delivery coal by rail, and 371,649 tons moved by rail to the intermediate points[10] affected by the 44-cent reduction. Based on the 1,178,000 tons of coal consumed at the Illuminating Company's plants at Avon Lake and Willoughby in 1953, the petitioners urge that their revenue loss would be less if that tonnage moved by truck and the remainder at the rates in effect on August 1, 1954, than if a reduction of 44 cents were applied to the remainder. For example, if it be assumed that the tonnage to Avon Lake and Willoughby moved at a rate equal to that from the Pittsburgh district of $3.19, the gross revenue loss from the diversion of that traffic to trucks would be $3,757,820. A reduction of 44 cents on the remainder of the traffic (11,307,860 tons) would decrease the revenue by $4,975,458, or $1,217,638 more than the loss of revenue on the traffic to Avon Lake and Willoughby. This does not take into consideration the savings in operating expenses that would result from not handling the traffic to Avon Lake and Willoughby, but it assumes that the remainder of the traffic would consist of fine coal and that all of it would continue to move by rail.

The petitioners take the position that the reduction to the Cleveland area cannot be confined to that area or to origins in Ohio, Pennsylvania, and northern West Virginia, but that it will spread throughout central territory and to the east and west thereof. They point out that from the Pittsburgh, Connellsville, and Fairmont districts, the destination group in which Cleveland, Avon Lake, Lorain, and Willoughby are located extends easterly along Lake Erie to Erie, Pa. To the Buffalo, N. Y., group the rates from the Ohio No. 8 and Cambridge districts are the same as from the Pittsburgh district. West of the Cleveland

[10] The intermediate points are those on the direct lines of the respondents to which reductions were made on August 2, 1954, such as Bedford, Elyria, Medina, and Wickliffe, Ohio.

area is the so-called affected territory which embraces northwestern Ohio, northeastern Indiana, and the Lower Peninsula of Michigan. Toledo, which is in affected territory, and Cleveland are the two largest industrial centers in northern Ohio. Because of competition between industries in these cities, the petitioners contend that it would be difficult to maintain a 44-cent reduction to Cleveland without making a similar reduction to Toledo. If the reduction were made to Toledo, they assert that it would spread throughout affected territory and to the west thereof. They note also that the rates from mines in southern West Virginia, Virginia, Tennessee, and eastern Kentucky, sometimes called the southern crescents, are the same to Toledo as to Cleveland, and state that if it should become necessary to reduce those rates to Cleveland because of origin competition, it would be necessary also to reduce them to Toledo or obtain relief from the long-and-short-haul provision of section 4 of the act, as some of the routes to Cleveland are through Toledo.

One of the principal reasons for the establishment and maintenance of an integrated rate structure on coal from the many producing districts in the Appalachian region to the various destinations in central territory is the highly competitive steel and allied industries which consume large quantities of coal for steam, metallurgical, and other purposes. Large iron and steel plants are located at Buffalo and Erie, in the Pittsburgh, Pa., Wheeling, W. Va., and Youngstown, Ohio, districts, at Canton, Cleveland, Massillon, Lorain, Mansfield, Toledo, Hamilton, Middletown, and Portsmouth, Ohio, at Detroit and Trenton, Mich., and in the Chicago district in Illinois and Indiana. The petitioners urge, therefore, that it would be economically undesirable to confine the 44-cent reduction to the Cleveland area from a few origin districts in Ohio, Pennsylvania, and West Virginia, and that probably this could not be done.

If the coal tonnage which moved into and through central territory in 1953, including the lake-cargo and ex-river movements, were subjected to a reduction of 44 cents a ton, the revenue losses would be $56,779,430. At the time of the further hearing herein the carriers were considering the restoration of the lake-cargo rates to the level which existed prior to the reduction in 1954, and if this were done [11] they would be higher in some instances than the track-delivery rates to the Cleveland area from the Ohio districts and the interstate dis-

[11] The prior rates were restored on August 1, 1955, resulting in rates from Ohio No. 8, Moundsville, and Fairmont to Lorain, for example, of $2.72, $2.76, and $2.98, respectively, when the coal is not transshipped to interior points after the water movement, and of $2.23, $2.26, and $2.46, respectively, when it is so transshipped. In addition, the carriers are considering other coal-rate reductions which have occurred since August 1950 in central and western trunkline territories with the object of determining whether it might be profitable to restore them to their former level.

tricts from which reductions have been published. If the lake-cargo tonnage is not considered, the direct and collateral revenue losses on the remainder of the 1953 tonnage, if subjected to a reduction of 44 cents, would be $37,002,522.

Various statistical data were submitted to show that the railroads are in no position to absorb the financial losses which the petitioners fear might flow from a continuation of the 44-cent reduction to the Cleveland area. For example, the rates of return on net property investment of the 4 principal Ohio coal carriers, the Baltimore & Ohio, the Pennsylvania, the Nickel Plate, and the New York Central, for the postwar years 1946 through 1953 ranged from 1.55 to 3.41 percent. For these and 9 other carriers, including the Chesapeake & Ohio, the Norfolk & Western, and the Virginian, the range was from 2.28 to 4.13 percent. It is pointed out that under our accounting regulations, expense accounts reflect normal depreciation charges, but tax accounts reflect accelerated writeoffs of the cost of defense facilities. This results in an overstatement of net earnings during the period of rapid amortization, the effect being a deferral of income taxes. If these tax deferrals were deducted from net operating income for 1953, the rates of return would be 2.92 percent for the 4 principal Ohio coal roads and 3.54 percent for all 13 carriers. For the first 8 months of 1954, as compared with the same months of 1953, the net railway operating income of the 4 Ohio carriers dropped from $145 million to $70 million, a decrease of 52 percent, and their net income declined from $97 million to about $10 million, or about 88 percent. For the 13 carriers, the net railway operating income declined 42 percent, and the net earnings 61 percent.

The production of coal in Ohio has increased substantially in the last 30 years. In 1932, the yield was 13,934,414 tons as compared with 34,112,748 tons in 1953, an increase of 144 percent. In the same period, the increase throughout the United States was 46 percent. The substantial increase in Ohio tonnage is due in part to the changeover from antiquated burning equipment to more modern burners. Much of the Ohio coal was not suitable for efficient use in the older burners, and this situation exists to some extent today.[12] Another reason is the great progress that has been made in washing and preparing coal for shipment, and an increase in the production from strip mining, which is a cheaper method than deep mining. About 60 percent of all Ohio coal is strip mined.

There has been a large increase also in the transportation of Ohio coal by trucks. Of the total shipments, the trucks transported

[12] The Illuminating Company, for example, has some old burning equipment at its Lake Shore plant for which it purchases low-ash coal from the southern crescents.

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2,746,957 tons or 13.4 percent in 1935, and 4,986,711 tons or 23.5 percent in 1940. In 1945, the truck tonnage increased to 5,307,988, but the percentage of the total shipments declined to 17.2 percent. However, in 1950 the trucks transported 10,235,682 tons, which represented 27.9 percent of the total, and in the first half of 1954 they hauled 4,377,579 tons or 31.6 percent. The rail carriers transported 17,322,579 tons of Ohio coal in 1935 and 25,523,956 tons in 1945, representing 84.5 and 82.5 percent, respectively, of the total shipments. In 1950 they hauled 25,539,640 tons, but this represented only 69.6 percent of the total shipments. In the first half of 1954 the rail carriers transported 8,400,066 tons or 60.7 percent of the total. Shipments by water increased from 906,628 tons or 2.5 percent of the total in 1950 to 2,213,062 tons or 6.6 percent in 1953. Shipments of Ohio coal by rail declined from 29,837,778 tons in 1947 to 21,634,231 tons in 1953, while shipments by truck and water increased from 6,904,569 to 12,134,377 tons in these respective years.

The petitioners attribute a large portion of the decline in rail shipments to the dieselization program of the railroads in recent years. For example, Ohio-mined rail fuel coal, excluding that of the Nickel Plate, was 9,093,890 tons in 1945, which declined to 4,939,802 tons in 1950 and to 2,531,847 tons in 1953. Coal for railway fuel purposes moves entirely by rail. Rail shipments of Ohio coal to Cleveland, Lorain, Avon Lake, and Willoughby rose from 1,329,145 tons in 1932 to 3,484,216 tons in 1953, an increase of 162 percent. As compared with 1945, the increase in 1953 was 51 percent. This clearly indicates, according to the petitioners, that there is no necessity for rate reductions to meet motor competition in the Cleveland area.

The Nickel Plate, which serves mines in the Ohio No. 8 and Middle districts, takes the position that the reductions are necessary to meet truck competition. It bases its position in part on what happened to the rail coal traffic from the Ohio mines to the Akron-Canton-Massillon areas. That traffic amounted to 1,988,423 tons in 1945. In 1949 it dropped to 841,911 tons, and in 1953 it was only 311,090 tons. The petitioners admit that most of the Ohio coal moving to the Akron-Canton-Massillon areas is transported by truck, but assert that this is due principally to the nearness of these areas to the coal mines in the Leetonia and Middle districts.

When the rail carriers filed their original petition in Ex Parte No. 175 the Nickel Plate did not regard truck competition as of sufficient importance to justify an exception thereto on coal traffic to the Cleveland area. However, a recent survey by this carrier shows that in the first 11 months of 1954 the trucks transported 310,445 tons to that area. Of this amount, 230,360 tons went to receivers equipped with rail sidings, including 72,000 tons to the Illuminating Company's plant

at Eastlake. The Nickel Plate's principal reason for opposing an increase in the intrastate rates is to prevent a further diversion of this traffic to the trucks. It is willing to join with other carriers in establishing reduced interstate rates from mines which compete with Ohio coal.

Coal moving to the Cleveland area is identified, according to use, as steam coal, coking or metallurgical coal, and special-purpose domestic coal. All of the coal produced in Ohio is known as steam coal, as it generally is not suitable for coking or other special purposes. The same is true of coal produced in the Butler-Mercer and Moundsville districts. The Moundsville coal seam is a continuation of the seam in Ohio No. 8, the two districts being divided by the Ohio River. Some coking coal is produced in the Fairmont district, but most of it is steam coal. This district produced over 42 million tons of coal in 1953, of which about 5 million tons were coking coal. Of the latter, 4,385,634 tons were produced by captive mines owned by steel mills which do not have plants in the Cleveland area, and the record indicates that none of the remainder moved to that area.

The steel mills in Cleveland and Lorain (none is in Avon Lake or Willoughby) obtain most of their coking coal from the southern crescents and the Pittsburgh, Freeport, and Belington districts, while most of the steam coal used in the Cleveland area comes from the Ohio districts and the Fairmont, Moundsville, and Butler-Mercer districts. In past years, the Pittsburgh district shipped substantial quantities of steam coal to the Cleveland area, but this movement has practically ceased. In 1953, only 4,599 tons of steam coal moved from the Connellsville district to Cleveland. Substantially all of the special-purpose domestic coal originates in the southern crescents. This coal is described as having special chemical and physical characteristics, such as very low sulphur content for use in the manufacture of malleable metals, and low-ash, high-fusion qualities for use in plants with antiquated burning equipment, and in homes and small business establishments.

In 1953, the steel mills in Cleveland and Lorain produced 4,715,000 tons of coke, which is equivalent to 6,695,300 tons of coal based on the use of 1.42 tons of coal for each ton of coke. This represents approximately 55 percent of the coal tonnage moved by rail to Cleveland, Lorain, Avon Lake, and Willoughby in that year. Special-purpose domestic coal moved by rail to these destinations in 1953 approximated 776,274 tons or about 6 percent of the total, and the steam-coal movement was 4,642,637 tons or about 39 percent.

The Illuminating Company is one of the largest consumers of steam coal in the Cleveland area, which is one of heavy industry. It furnishes electricity to more than 480,000 customers in an area of 1,700 square

miles and, in addition, supplies steam for heating purposes in downtown Cleveland. It purchased the following quantities of steam coal in the years indicated: 2,013,625 tons in 1946, 2,980,909 tons in 1947, 3,042,409 tons in 1948, 2,340,777 tons in 1949, 2,742,535 tons in 1950, 3,272,165 tons in 1951, 3,108,800 tons in 1952, 3,339,203 tons in 1953, and 2,568,657 tons in 1954. It expected to purchase about 2,617,000 tons in 1955. This includes coal used at Ceico (Ashtabula) which, although not involved in this reopened proceeding, is referred to because all of the powerplants are interconnected so that the electricity produced at any one can be distributed throughout the system.

The smaller tonnage in 1954 as compared with 1953 is due in part to the stockpiling of about 200,000 tons in 1953, and in part to the greater use of the plant at Eastlake (Willoughby) which is the newest and most efficient of the 4 plants. The Eastlake plant began operations in the latter part of 1953, and used only 249,540 tons in that year. In 1954 it used about 980,000 tons, and it was expected to use about 1,229,000 tons in 1955. This increase at Eastlake will decrease the tonnage to Ceico, Avon Lake, and Lake Shore. The Illuminating Company expects its tonnage to increase in 1957, and it predicts that its electric power output will double within 10 years. This does not mean, however, that the coal tonnage is expected to double, as the purchase of some power from other companies is anticipated.

Coal is the largest single item of expense in the production of electricity by the Illuminating Company. In 1953 it spent about $22 million for coal, of which about $10 million was for transportation charges. The delivered cost of coal represents about 75 percent and the transportation charges about 34 percent of its power-production costs. As indicated, the Illuminating Company received by truck 144,924 tons of coal at Ceico and 118,049 tons at Eastlake in 1953. Trucks were used for the transportation of 42,115 tons to Ceico in the first 4 months of 1954 and 63,892 tons to Eastlake in the first 6 months of that year. After the rates were reduced from Raymilton and the Ohio districts, the truck tonnage diminished considerably. If the Ohio rates are increased to their former level and the reduction from Raymilton is removed, it expects to use trucks for the transportation of about a million tons of coal in the first year. About one fourth of this tonnage would come from Raymilton and the Butler-Mercer district and the remainder from the northernmost Ohio districts, such as Middle and Leetonia. This first year would be regarded as a transitional period, after which the truck tonnage might be expected to increase.

The Illuminating Company's estimate as to the amount of coal that may be trucked to its plants is based in part on its past experience with truck shipments to Ceico and Eastlake. When it commenced using

truck transportation in 1950, the rail rate from Raymilton to Ceico was $2.38 and the truck rate was $2.56. Raymilton is the rail station for an off-rail mine, and as the cost of moving the coal from the mine to the rail car was 25 cents a ton, the truck rate resulted in a saving of 7 cents a ton as compared with the truck-rail movement. The truck rate is said to have been reduced to $2.46 after the lapse of 1 year and further reduced to $2.36 in October 1952. In the meantime, the rail rate was increased to $2.67 in May 1952 as a result of Ex Parte No. 175, and, as indicated, it was reduced to $2.36 in April 1954. The coal company which operates the mine near Raymilton furnished the truck transportation to Ceico. When the stated reductions in the truck rate were made, they did not result in reductions in the delivered price of the coal, as the coal company increased the mine price of the coal in the same amounts as, and coincident with, the stated rate reductions. The average rate on the coal which moved to Eastlake (Willoughby) by truck is stated to have been $2.80, but this coal was likewise transported by the coal companies which supplied the coal. In view of this type of operation, the stated truck rates cannot be accepted as a reliable guide as to the cost of transporting coal by truck. The record shows, for example, that numerous shipments of coal were received during the week ended September 5, 1953. Some of these shipments show a mine price of $4.05 a ton and a truck rate of $2.36, a total of $6.41, on coal which tested 12,700 B. t. u.'s (British thermal units). Others with the same B. t. u. testing show mine prices of $3.40 and $3.50 a ton with truck rates of $2.50 and $2.70, or totals of $5.90 and $6.20, respectively.

In addition to eliminating the cost of transferring the coal from the mine to the railhead at Raymilton when trucks were used for the through transportation to its plants, the Illuminating Company was able to reduce handling and dumping costs at its plants. At Ceico, for example, about 4 cents a ton was saved with the rail unloading equipment kept active, and it would be about 10 cents a ton if the handling equipment were placed on a standby basis. No item is mentioned, however, for the cost of maintaining the truck-unloading equipment. There would also be a saving of 1 cent a ton for demurrage based on the Illuminating Company's experience in the last 9 years.

The trucking of a million or more tons of coal to the Illuminating Company's plants would require an entirely different type of operation than that heretofore performed. The company would either purchase the trucking equipment and perform the trucking itself or arrange to have the trucking done by a reputable trucking company. It has had several studies made with respect to the costs of truck transportation. One study was made by a trailer manufacturer and indicates a cost of $2.54 a ton from Cadiz, in the Ohio No. 8 district, to Avon Lake, about 125 miles. It is based on 2 round trips a day for 300 days a year, with

depreciation of 5 years on the tractor and 8 years on the trailer. Another study, made by a tractor manufacturer, indicates a cost of $3 a ton for a haul of 120 miles, based on 3 round trips a day for 240 days a year, with depreciation of 2 years on the tractor and 4.5 years for the trailer. Neither of these studies shows any item for profit. Another study is based on calculations made by members of our staff as to the cost of transporting iron and steel in 1953 in eastern territory. It indicates costs of $2.13 a ton for 80 miles, $2.66 for 100 miles, and $3.18 for 120 miles, based on 20 minutes for loading and unloading. It includes no profit item, and there is no indication that the costs of transporting iron or steel are comparable to the costs of hauling coal.

One cost study, and perhaps the most significant, was made by a large trucking company of the type which might be employed by the Illuminating Company to haul its coal. It shows costs, including items for management, administration, and profit, of $1.82 a ton for 60 miles, $2.45 for 80 miles, $2.75 for 100 miles, and $3.12 for 120 miles, based on loads of 23 tons. The 60-mile hauls contemplate 4 round trips a day, with 2 drivers for each unit. For the hauls of 80, 100, and 120 miles, 3 round trips a day are contemplated for each unit, with either 2 or 3 drivers for the 80-mile haul and 3 for the other hauls. All of the data are based on the use of the trucking equipment 240 days a year, but the statement is made that it could be used at least 300 days a year.

The petitioners make certain criticisms of, and revisions in, the data mentioned in the last study. First, they state, through an expert witness, that it would be practically impossible to attain a 240-mile round trip in each of the three 8-hour shifts in connection with the haul of 120 miles. This is based on 1 hour for loading and unloading and 30 minutes for lunch, whereas the study is based on 10 minutes for loading and 5 minutes for unloading. Based on the weight of a diesel tandem tractor and a hopper trailer weighing 28,620 pounds, the petitioners show that it would be impossible to transport 23 tons of coal without exceeding the Ohio State weight limit of 70,000 pounds. The study, however, contemplates the use of a gasoline tractor weighing about 11,750 pounds and a so-called newly designed aluminum trailer weighing about 10,000 pounds. Even with the use of the lighter equipment, however, only about 19 tons could be transported from Pennsylvania without exceeding the Pennsylvania State weight limit of 60,000 pounds.[13] Moreover, the rate of $3.12 for a 120-mile haul, which is approximately the distance from the northern mines in the Ohio No. 8 district to the Cleveland area, exceeds the prior rail rate of $3.07 from that district to Cleveland, and, as later shown, the record clearly indicates that it is not feasible to transport coal by truck from the Ohio No. 8 district to the Cleveland area.

[13] On July 1, 1955, after the hearing herein was closed, the weight limit in Pennsylvania was increased from 45,000 to 60,000 pounds, as stipulated by the parties.

The petitioners contend that the interstate rates to the Cleveland area are reasonable when judged by their history, their prior approval by this Commission, and comparisons with other rates on coal in the same general territory. For example, to Cleveland from the Pittsburgh district, the so-called base district, the present rate of $3.19 yields revenue of 18.79 mills per ton-mile for an average distance of 169.8 miles. This same rate is applicable from the Pittsburgh district to Oil City, Pa., 164.5 miles, and to Erie, 199 miles, which produces ton-mile revenues of 19.39 and 16.03 mills, respectively. From the Reynoldsville district to Buffalo, 208.2 miles, the present rate of $3.57 yields revenue of 17.15 mills per ton-mile. The latter rate was found not shown to be unreasonable by division 2 in *Rochester & Pittsburgh Coal Co.* v. *Baltimore & O. R. Co.*, 294 I. C. C. 423, decided March 10, 1955.

It is urged by the petitioners that the Ohio intrastate rates prior to August 2, 1954, to the Cleveland area did not exceed a just and reasonable level, and that the present intrastate rates create unjust discrimination against interstate commerce. In support thereof, they refer to the fact that the Ohio commission approved the prior rates, which action was upheld by the Supreme Court of Ohio, and to the revenue loss of $1,519,554 based on the 1953 tonnage to Cleveland, Avon Lake, Lorain, and Willoughby, and the much greater potential loss which may flow from the reduced rates.

The record shows that the conditions incident to the intrastate transportation of coal to northeastern Ohio are not more favorable than the conditions incident to the interstate transportation of coal to that area, and none of the parties contends otherwise. The Illuminating Company, however, and others who introduced evidence in opposition to an increase, urge that the reduced intrastate rates are compensatory and reasonable, and do not create unjust discrimination against interstate commerce.

Using the so-called 23922 scale originally prescribed in *Coal Trade Assn. of Indiana* v. *Baltimore & O. R. Co.*, 185 I. C. C. 225, as modified on reconsideration, 190 I. C. C. 743, and as later adjusted in *Coal to Beloit, Wis., and Northern Illinois*, 263 I. C. C. 179, hereinafter called the original and modified scales, as common denominators, the Illuminating Company compares the reduced intrastate rates with others prescribed or found lawful in other proceedings. From the Middle district to Cleveland, 92.6 miles, the original and modified scales, with subsequent general increases added, produce rates of $2.32 and $2.39, respectively, as compared with the present rate of $2.36. From the Ohio No. 8 district to Cleveland, 128.2 miles, the scale rates would be $2.59 and $2.67, and the present rate is $2.63. From the Pittsburgh district to Youngstown, 101.3 miles, the present rate is $2.39, which is

the equivalent of a rate of $1.37 prescribed in *Bituminous Coal to Youngstown District*, 263 I. C. C. 683, with subsequent increases added, and the original and modified scales would result in rates of $2.42 and $2.49 for this distance. For 95 miles, the distance used in prescribing the rate of $1.37, the modified-scale rate is $2.39, or the same as the present rate to Youngstown. In *Intrastate Coal Rates to Northern Illinois*, 283 I. C. C. 271, we found the intrastate rates from Illinois mines to 43 destinations in northern Illinois not shown to be unlawful under section 13 of the act. Those rates, with subsequent increases added, average 88 percent of the modified scale from Fulton-Peoria, the base group in Illinois. To the same destinations, the rates from the Brazil group, the base group in Indiana, average 94 percent of the modified scale.

Most of the Ohio intrastate rail shipments of coal to the Illuminating Company in 1953 moved for distances between 100 and 150 miles. Based on a 1-percent sample thereof, the average distance was 131.8 miles and the average revenue $3.05 a ton. If the revenue were reduced by 44 cents a ton, the average would be $2.61. This revenue is compared with the average of $2.52 a ton for an average haul of 125.6 miles on interstate shipments to and from Ohio (other than lake-cargo coal), based on a 1-percent sample of all such shipments.

The Illuminating Company attempted to show the cost of transporting coal by rail to the Cleveland area by use of what is commonly called Rail Form A. The costs were constructed on an out-of-pocket basis, reflecting 80 percent of operating expenses, rents, and taxes, including a 4-percent return on the value of equipment and 2 percent on investment of road as of January 1, 1954, but not including the operation of coal and ore wharves or loss and damage payments. The formula was applied individually to the 1953 operations of seven of the respondents and collectively to the carriers in the Pocahontas region. Using the Illuminating Company's 1953 coal traffic as a base, the study shows that the ratio of revenue to cost on intrastate traffic is 160 percent at the reduced rates and on interstate traffic 156 percent. Based on that company's traffic for August and September 1954, the ratios are 162 percent intrastate and 148 percent interstate. For the average short tariff route distances the ratios from the individual districts are 180 percent from Massillon, 75 miles, 167 percent from Middle, 92 miles, 161 percent from Ohio No. 8, 128 miles, 140 percent from Crooksville, 170 miles, 137 percent from Cambridge, 176 miles, 167 percent from Butler-Mercer, 100 miles, 164 percent from Moundsville, 150 miles, 165 percent from Pittsburgh, 162 miles, 145 percent from Fairmont, 247 miles, and from 154 to 113 percent from the southern crescents, 292 to 520 miles. Other ratios are shown based

on system average cost patterns applied to all interstate coal traffic to and from Ohio (excluding lake cargo). These data indicate that interstate traffic as a whole produces revenues which exceed costs by 35 percent.

The Illuminating Company admits that the cost data used in the comparisons are not based on actual costs associated with the services performed and do not have the accuracy necessary for a fair approximation of the actual costs incurred from the various origin districts, as many assumptions had to be made. This, it is explained, is due to its inability to obtain from the respondents data wholly within their possession. It contends, however, that the cost figures are helpful, as common denominators, to show that the reduced intrastate rates make a better relative contribution to revenues than do the interstate rates. It is of course recognized that cost is only one of a number of important elements to be considered in determining the lawfulness of rates, and that rates on coal are not generally made on a mileage basis but are related to one another by group differentials which usually reflect competitive needs more than distances.

From mines served by the Nickel Plate, the rate of $2.36 from the Middle district produces respective car-mile and ton-mile revenues of $1.375 and 22.9 mills to Cleveland, 103 miles, $1,348 and 22.5 mills to Lorain, 105 miles, $1.25 and 20.8 mills to Avon Lake, 113.3 miles, and $1.161 and 19.3 mills to Willoughby, 122 miles, based on 60 tons per car; and from the Ohio No. 8 district the rate of $2.63 to these destinations produces revenues ranging from $1.115 to $1.013 per car-mile and from 19.2 to 16.9 mills per ton-mile for distances ranging from 136.8 to 155.8 miles. The average distances from all of the rail mines in those districts to the Cleveland area are less than the distances over the Nickel Plate, and the average earnings would be correspondingly greater.

The Nickel Plate urges that the petitioners' estimated loss of revenue is exaggerated even when consideration is limited to the 1953 coal traffic to Cleveland, Lorain, Avon Lake, and Willoughby. Of the 12,114,211 tons which moved to those destinations in 1953, 5,429,355 tons originated in the southern crescents. Practically all of the latter was coking coal, and that which was used for steam purposes was in the nature of special-purpose domestic coal. If the southern tonnage is deducted from the total, the remainder is 6,684,856 tons. Applying the 44-cent reduction to the latter tonnage results in a revenue loss of $2,941,336, which is less than the revenue from 1 million tons at the average rate of $3.05 paid by the Illuminating Company or at the rate of $3.07 previously in effect from the Ohio No. 8 district to the Cleveland area.

Substantially all of the coal which moved from the Pittsburgh and Freeport districts to the Cleveland area in 1953 was coking coal, the exception being 23,878 tons of captive steam coal from Pittsburgh to Lorain. If all of the tonnage from these 2 districts (2,022,724 tons), together with the southern tonnage, is deducted from the total to the Cleveland area, the remainder is 4,662,132 tons. Applying the reduction of 44 cents to the latter results in a revenue loss of $2,051,338, which is less than the revenue from 1 million tons at the Ohio No. 8 rate of $3.07 or the rate of $2.80 from the Middle-Leetonia districts.

In 1953 the Ohio No. 8, Cambridge, Middle, Leetonia, Massillon, and Crooksville districts (the Ohio districts from which the reduced rates apply) shipped by rail 3,423,755 tons of coal to Cleveland, Lorain, Avon Lake, and Willoughby. If the 44-cent reduction had been in effect at that time, the rail revenues would have been reduced by $1,506,452. However, the diversion of 1 million tons of coal from rail to truck would have resulted in a revenue loss of $1,293,548 under the rate of $2.80, and of $1,563,548 under the rate of $3.07. The 44-cent reduction on 3,423,755 tons would have been offset by a diversion of 538,018 tons to trucks based on the rate of $2.80.

Although the Illuminating Company indicates that it might truck some coal from the northern part of the Ohio No. 8 district if the rates are increased, the record is persuasive that it is not feasible to truck from that district to the Cleveland area. The company's past experience in truck transportation within Ohio has been confined largely to shipments originating in the Middle and Leetonia districts. It received 455 tons by truck from the Ohio No. 8 district in 1953, but this apparently was an experimental venture, and none moved therefrom by truck in 1954. A witness for a company which owns and operates 3 deep mines and 2 strip mines in the Ohio No. 8 district, stated that some experimental shipments made by truck to northeastern Ohio were unprofitable. Another witness, connected with a company which produced about 5 million tons at the so-called Georgetown mine in Ohio No. 8, stated that it is not considered practical to truck coal from that district to the Cleveland area; and another witness, with extensive experience in the sale of coal in the Cleveland area, gave similar testimony with respect to coal produced by his company at Blaine in Ohio No. 8. The distances to the Cleveland area are greater from the Cambridge and Crooksville districts than from Ohio No. 8, and no one contends that truck shipments have moved or will move from those two districts to the Cleveland area.

The highway distances from mines in Columbiana, Stark, Carroll, and Tuscarawas Counties in the Leetonia and Middle districts to Eastlake (Willoughby) range from about 64 to 89 miles, and average about 80 miles. A survey of record indicates that as of January 1,

1950, there were 619,700,000 tons of recoverable primary [14] coal reserves in these counties, of which 16,202,000 tons are shown as strip-mine reserves in Columbiana and Tuscarawas Counties. The petitioners point out that over 9 million tons of strip coal were produced in the latter counties in 1951, 1952, 1953, and the first 9 months of 1954, leaving slightly over 7 million tons, which, at the 1953 rate of production, would be exhausted in less than 3 years. This, they urge, would prevent the Illuminating Company from obtaining the cheaper mined strip coal from these counties for any substantial period of time. That the survey may be understated is indicated by the fact that it shows no primary reserves and only 1,513,000 tons of secondary reserves in Stark County, Ohio, yet this county produced 999,728 tons in 1950, 950,923 tons in 1951, 901,942 tons in 1952, and 971,868 tons in 1953. The evidence shows 30 mines in Columbiana, Stark, Carroll, and Tuscarawas Counties, with a 1953 production ranging from 27,878 to 533,291 tons. Eight of these mines shipped by rail and truck, and the remainder shipped by truck only, but the destinations of these shipments are not shown.

From the Butler-Mercer district the distances are about 68 miles to Ceico and 85 miles to Eastlake from Mercer County, and about 82 miles to Ceico from Lawrence and Venango Counties. Mercer and Lawrence Counties have indicated reserves of about 685 million tons of recoverable coal. Apparently some coal may be trucked from these counties to Ceico and Eastlake, but no cost studies have been made by the Illuminating Company for such transportation. Since only about 19 tons could be hauled lawfully in one trucking unit [15] under the Pennsylvania weight limits, it seems obvious that the cost per ton would be greater from the Butler-Mercer district than from origins in Ohio.

Coal production in the principal counties in the Leetonia and Middle districts rose from 3,649,461 tons in 1945 to 6,503,652 tons in 1953. Considering the indicated recoverable reserves in these districts, it is apparent that they could supply the Illuminating Company with substantial quantities of coal for many years.

There is keen competition in the steam coal market in the Cleveland area between Ohio producers and interstate shippers, particularly those in the Fairmont-Moundsville districts. In past years, those districts furnished a substantial amount of the steam coal purchased by the Illuminating Company. Their participation in that traffic rose

[14] These reserves are further described as measured, indicated, and inferred. "Measured" is based on out-crops, trenches, and drill holes; "indicated" in part on measured and in part from projection of visible data for about 1 mile; and "inferred" largely from estimates based on broad general knowledge of the geological character of the bed or region.

[15] This assumes that the lighter equipment contemplated by the Illuminating Company could be successfully used.

from 845,722 tons or 42 percent in 1946 to 1,451,282 tons or 62 percent in 1949. It dropped to 49 percent in 1950, and was 38 percent in 1951, 31 percent in 1952, 29 percent in 1953, and 20 percent in 1954. That company's tonnage from the Leetonia, Middle, Cambridge, and Ohio No. 8 districts increased from 819,271 tons or 35 percent of the total in 1949 to 1,861,681 tons or 72.5 percent in 1954. Most of this tonnage originated in the Ohio No. 8 district. The increase in the tonnage from the Fairmont-Moundsville districts prior to 1950 is attributed to the general demand for coal and a shortage of rail cars.

To Cleveland (not including Lorain, Avon Lake, and Willoughby), the tonnage as a whole from the Fairmont district shows a pattern somewhat similar to that purchased by the Illuminating Company. This traffic amounted to 799,250 tons in 1946, 920,476 tons in 1949, 835,250 tons in 1950, 968,863 tons in 1951, 534,268 tons in 1952, and 463,228 tons in 1953. The tonnage from the Butler-Mercer district to Cleveland has shown a rather steady increase. It was 16,782 tons in 1946, 92,149 tons in 1949, 113,794 tons in 1950, 129,784 tons in 1951, 127,802 tons in 1952 and 163,591 tons in 1953. The coal production in the Butler-Mercer district was 49 percent greater in 1953 than in 1923, whereas the national production declined from 100 to 80.2 percent during that period. The Butler-Mercer shippers are primarily interested in regaining or retaining the differential relationship which has existed generally between the rate from that district and the rates from other districts to the Cleveland area. The present rate from the Butler-Mercer district to Cleveland is $3, or 19 cents less than that from the Pittsburgh district and 7 cents less than the prior rate of $3.07 from Ohio No. 8.

The Clarksburg Coal Freight Association is a voluntary association of coal producers who operate 17 coal mines in the Clarksburg area of the Fairmont district, with an annual output of about 5 million tons of coal. Prior to September 1, 1949, the Fairmont rate to Cleveland was 25 cents higher than Ohio No. 8 and 47 cents higher than from the Middle district. On that date, as a result of Ex Parte No. 168 increases, the respective differentials became 27 and 51 cents, and these were further increased to 30 and 57 cents on May 13, 1953. The present differentials, as a result of the 44-cent reduction within Ohio, are 74 and 101 cents, respectively. The Cleveland area has always been a major market for the steam coal produced by these operators, and they have invested more than $20 million in their mining properties since 1932. Even before the 44-cent reduction became effective in Ohio they lost some business in the Cleveland area by reason of truck transportation, and under the present rate differentials they assert it is impossible to continue shipping to that area. They point out that truck compe-

tition is just as damaging to them as to the Ohio operators who ship by rail, and contend that the only just and reasonable way to correct this situation is to apply the 44-cent reduction to the Fairmont rate.

A company which owns and operates a mine at Cassville, W. Va., in the Fairmont district has a production capacity of 5,000 tons daily, and reserves of about 40 million tons. It has an investment of about $4 million in this mine, which is fully mechanized and equipped with a modern washing and air-cleaning plant. For many years this company has shipped a large tonnage of coal to the Cleveland area. Beginning in July 1953, that tonnage began to decrease, and in the first 7 months of 1954 it was 43 percent less than the monthly average in the last 6 months of 1953. On and between January 1 and July 31, 1953, it shipped 125,000 tons of steam coal to the Cleveland area, and for the same period in 1954 the shipments totaled 61,800 tons, a loss of 63,200 tons. This loss is attributed to truck competition, and its tonnage suffered an additional drop after the 44-cent reduction became effective on August 2, 1954. It asserts that it is suffering irreparable losses under the present rate bases, and urges that the only logical solution to the problem is to extend the 44-cent reduction from Fairmont to the Cleveland area.

Another company, with 3 mines in the Moundsville district and 1 in the Fairmont district, has lost business in the Cleveland area since the 44-cent reduction became effective. Prior to August 2, 1954, the rate from the Moundsville district to Cleveland was the same as the rate from the Ohio No. 8 district, as a result of the decision in *Coal from West Virginia to Northeastern Ohio*, 220 I. C. C. 333, decided March 8, 1937, and the rate to Willoughby was placed on this same basis on May 17, 1954. From Moundsville to Avon Lake and Lorain the rate is the same as from the Pittsburgh district; namely, $3.19. This company has experienced difficulty in selling in the Cleveland area in competition with Ohio coal under the differentials which previously existed, and it expects to lose all of its traffic to that area unless it receives a reduction of 44 cents also from its mines.

The impact of the 44-cent reduction within Ohio is compared with what occurred when a lesser reduction of 29 cents a ton was made in 1932. That reduction remained in effect during 1933 when the Ohio tonnage to Cleveland was 42.3 percent of the total as compared with 29.7 percent in 1932, and the interstate shipments from the northern mines dropped from 38.4 to 30.6 percent of the total. In August, September, and October, 1953, the Ohio tonnage to Cleveland, Lorain, Avon Lake, and Willoughby was 52.3 percent of the total, and this rose to 68.2 percent in the same months of 1954. In these same respective months, the portion shipped from the northern interstate mines declined from 47.7 to 31.8 percent.

Counsel for certain of the interstate shippers and associations insist that we may, in this proceeding, require a reduction in the interstate rates, at least to the extent of 44 cents a ton, to remove any undue preference and prejudice which may be found to exist between intrastate and interstate shippers and localities. They point out, and the record shows, that the natural tendency will be for the consumers in the Cleveland area to reduce further their purchases of steam coal from the higher rated interstate districts if the Ohio rates are increased to their former level, thereby creating a more serious source of injury to them than to the Ohio shippers. They refer to the statement in the original report herein (at page 443) that the major question presented is the relationship between State and interstate rates, and as the competitive situation is more forceful today, they urge that the relationship is still of prime importance. No one has contended here that the prior differentials, as such, are unlawful in any respect, and they insist that this record requires the restoration of those differentials by reductions in the interstate rates.

In support of their position, these counsel refer, among others, to the so-called Shreveport case, *Houston, E. & W. T. Ry. Co.* v. *United States*, 234 U. S. 342, wherein the Supreme Court stated:

> Manifestly the order might be complied with, and the discrimination avoided, either by reducing the interstate rates from Shreveport to the level of the competing intrastate rates, or by raising these intrastate rates to the level of the interstate rates, or by such reduction in the one case and increase in the other as would result in equality.

They admit that the order in that case was alternative in its requirements, but it is argued that section 13 (3) and (4) further implemented the law by authorizing us to remedy situations of this nature by either increasing the intrastate rates or reducing the interstate rates. They point out that upon finding unlawful prejudice or discrimination, section 13 (4) provides that we "shall prescribe *the* rate, fare, or charge, or the *maximum* or minimum, or *maximum* and minimum thereafter to be charged * * *" [Italics supplied.] They urge that *the* rate relates to interstate as well as intrastate traffic, and that we would never have occasion to prescribe a maximum intrastate rate. Thus, it is argued, we have the authority to prescribe maximum interstate rates in this proceeding.

We agree that the relationship between State and interstate rates is a primary consideration here, but we do not agree that, under the issues in this reopened proceeding, we may order a reduction in the interstate rates. Whether or not in a section 13 (3) proceeding, where the issue as to the interstate rates is squarely raised and tried, maximum interstate rates may be prescribed by us under the powers conferred upon this Commission in that section of the act, need not here

be determined. At the further hearing herein, the examiner plainly stated, in response to inquiries from counsel, that in his opinion the interstate rates as such were not in issue. The record shows that prior to August 2, 1954, the differentials between the various producing districts, interstate and intrastate, had been in effect generally, with only slight changes or modifications, for more than 30 years, and that some of the interstate shippers are suffering a severe disadvantage in attempting to compete in the Cleveland area under the present adjustment, but they made no attempt to show that the interstate rates exceed a maximum reasonable level.

Discussion and conclusions.—The coal produced in Ohio is what is commonly known as steam coal, which generally is not suitable for coking and other special purposes. The reduction in the rates from the Ohio origins to the Cleveland area (and from Raymilton to Ceico) was for the purpose of meeting actual and potential truck competition. This competition does not exist as to coal suitable for coking and other special purposes. There appears to be no competitive reason, therefore, for a reduction in the rates on coking and other special-purpose coal.

The Illuminating Company suggests that from a truck- and market-competitive standpoint, reduced rates could be confined to the Ohio districts and the Fairmont, Moundsville, and Butler-Mercer districts to the Cleveland area. If this were done, the loss in rail revenue, based on the 1953 tonnage from these districts to Cleveland, Lorain, Avon Lake, and Willoughby and a reduction of 44 cents a ton, would be less than the revenue loss from the diversion of 1 million tons of coal to trucks at the rate of $2.80 from the Middle and Leetonia districts. The petitioners contend, however, that the reduction could not be so confined. They assert that if a reduction were made from the Fairmont and Moundsville districts, the shippers in the Pittsburgh, Connellsville, and Freeport districts would insist on similar treatment, which would lead to requests for similar reductions from the southern crescents.

We are inclined to agree with the petitioners. There are large reserves of coal in the Pittsburgh district, particularly in Washington County, Pa., which may be used for steam purposes, and this district formerly supplied substantial quantities of steam coal to the Cleveland area. The fact that this movement has practically ceased, does not necessarily indicate that it will not be renewed in the future if the rates therefrom are properly related to those from other districts. The Connellsville district also produces steam coal and shipped 4,599 tons in 1953 and 3,283 tons in the first 6 months of 1954 to the Cleveland area. The rates to Cleveland from the Pittsburgh and Connellsville districts are 18 and 10 cents respectively, less than the rate from

the Fairmont district, but if the Fairmont rate were reduced by 44 cents a ton without a similar reduction from the Pittsburgh and Connellsville districts the rates from the latter districts would be 26 and 34 cents, respectively, higher than from Fairmont.

Another element that may not be overlooked is the fact that Fairmont produces a substantial amount of coking coal, and the rates on coal may not be based solely on the use to which it is put. Although most of this coal is produced in captive mines owned by steel companies outside the Cleveland area, and none of the remaining production was shipped to the Cleveland area in 1953, the situation may change if the rate therefrom to Cleveland were made 26 cents less than the rate from the Pittsburgh and Freeport districts. Such action undoubtedly would be followed by requests for reductions in the rates from the southern crescents, which ship millions of tons of coking coal annually to Cleveland and Lorain.

The shippers in the southern crescents are also apprehensive that the present adjustment may cause some plants that now use southern coal to remodel or replace their coal-burning equipment so that it would be more economical to use Ohio coal, thereby depriving them of their market for so-called special-purpose domestic coal. Although this may happen in any event, it seems logical that the present adjustment would hasten such action.

There has been a substantial increase in the amount of Ohio coal transported by trucks in recent years, but it is not shown that there has been a similar increase in such transportation to the Cleveland area. The record shows a steady increase in the rail shipments of Ohio coal to Cleveland. From the Ohio No. 8, Cambridge, Middle, Leetonia, and Crooksville districts these shipments increased from 1,702,798 tons in 1950 to 2,282,252 tons in 1953.

The Illuminating Company's experience in the receipt of coal by truck has been confined to that which was transported by the coal producers. As herein stated, the indicated rates charged on these shipments cannot be accepted as a reliable guide as to the cost of such transportation, although it is noted that the average rate said to have been charged on the truck shipments from the Middle-Leetonia districts is $2.80, which is the same as the prior rail rate from those districts to the Cleveland area. The cost studies relied on by the Illuminating Company as indicating the cost of truck transportation to the Cleveland area vary widely, and some of them appear to have been prepared by companies which have never engaged in such transportation. The study which appears to be the most significant is based on the use of a so-called newly designed aluminum trailer which, with the type of tractor contemplated, would permit the transportation of 23 tons of coal without violating the Ohio State weight laws. Such a

trailer, however, has never been tested, and, so far as appears, it is merely in the blueprint stage.

On this record, we are not convinced that an increase in the intrastate rates to their former level would cause a diversion of traffic to the trucks to such an extent that the respondents would suffer a greater loss in revenue than would result from maintenance of the present rates.

There is keen competition in the sale of steam coal in the Cleveland area between the Ohio districts from which the reduced rates apply and some of the interstate districts, particularly the Fairmont, Moundsville, and Butler-Mercer districts, and the shippers in the latter districts have been adversely affected by the wide spread between the intrastate and the interstate rates to the Cleveland area. There is no truck competition from the interstate districts or the Ohio No. 8, Cambridge, and Crooksville districts to the Cleveland area. There is some truck competition from the Middle and Leetonia districts, but it is indicated that it is not of sufficient severity to warrant different treatment of the rates from those districts and the rates from the other districts.

Except for the addition of general increases authorized by this Commission and the Ohio commission, the interstate and the intrastate rates on bituminous coal to the Cleveland area generally have been in effect for many years, and, with only slight variations, this is likewise true of the differentials and rate relationships which existed between such rates on August 1, 1954. The intrastate rates that were in effect on that date were approved by the Ohio commission.

We conclude that:

1. The present intrastate rates on bituminous fine coal, in carloads, from origins in Ohio to Cleveland, Lorain, Avon Lake, and Willoughby, and affected intermediate points, do not contravene the requirements of the order entered herein on May 2, 1933.

2. The conditions incident to the intrastate transportation of coal from origins in Ohio to the destinations mentioned in finding 1 are not more favorable than the interstate transportation of coal from origins in adjoining States to the same destinations.

3. The interstate rates and charges on coal from adjoining States to the destinations mentioned in finding 1 are reasonable.

4. The intrastate rates here in issue from the Ohio No. 8, Middle, Leetonia, Cambridge, and Crooksville districts to the destinations defined in finding 1 are, and for the future will be, unduly preferential of Ohio shippers and localities and unduly prejudicial to interstate localities and shippers of bituminous fine coal from origin districts in Pennsylvania and West Virginia, particularly the Moundsville and Fairmont districts, to the same destinations.

5. The intrastate rates here in issue from the Ohio districts named in finding 4 to the destinations mentioned in finding 1 are not contributing their fair share of the revenues required by the respondents to enable them to render adequate and efficient service and to operate profitably, and are causing unjust discrimination against interstate commerce.

6. The undue preference and prejudice and unjust discrimination found to exist should be removed by increasing the intrastate rates in issue from the Ohio No. 8, Middle, Leetonia, Cambridge, and Crooksville districts to the destinations mentioned in finding 1 to the level which existed from these districts to the said destinations on August 1, 1954.

7. The establishment of the increased intrastate rates as provided in finding 6 will not result in unreasonable rates or charges, or rates and charges that are unreasonable in relation to interstate rates and charges, and will result in increases in the respondents' revenues.

An appropriate order will be entered.

CHAIRMAN ARPAIA and COMMISSIONER TUGGLE concurred in the result.

COMMISSIONER FREAS dissents.

COMMISSIONER MURPHY did not participate in the disposition of this proceeding.